

IN THE HIGH COURT OF SINDH, KARACHI

Special Criminal A.T.J. Appeal No.75 of 2022

Present:

Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Khadim Hussain Tunio

Appellants

i. Aziz Gul S/o Saeed Gul
ii. Akhtar Ali S/o Bahadur Khan
through Mr. Tahir Rahim,
Advocate

Complainant

Muhammad Owais S/o Ghulam
Khawaja Niazi, present in person.

Respondent

The State
through Mr. Muhammad Iqbal
Awan, Additional Prosecutor
General Sindh a/w SIP Deedar
Hussain, PS Surjani Town

Date of Hearing

03.05.2023

Date of Order

03.05.2023

JUDGMENT

MOHAMMAD KARIM KHAN AGHA, J:- Appellants Aziz Gul and Akhtar Ali were tried in the Anti-Terrorism Court No.IV, Karachi Division in Special Case No.264/2020 under FIR No.761/2020 U/s. 392/353/324/34 PPC R/w Section 7 ATA, 1997 and Special Case No.264-A/2020 under FIR No.762/2020 U/s. 23(1)(a) Sindh Arms Act, 2013 both of PS Surjani Town, Karachi and vide judgment dated 05.03.2022, they were convicted and sentenced as under:

- a. Accused Aziz Gul S/o Saeed Gul and Akhtar Ali S/o Bahadur Khan found guilty of the charged offence punishable u/s 392/34 PPC, are convicted and sentenced to suffer imprisonment for three years R.I. and fine of Rs.10,000/- each, in case of default of payment of fine, they shall further suffer imprisonment for two months, each.
- b. Accused Aziz Gul S/o Saeed Gul and Akhtar Ali S/o Bahadur Khan found guilty of the charged offence U/s 353/324/34 PPC R/w

Section 7(1)(h) ATA, 1997 they are convicted and sentenced to suffer imprisonment for five years, each, and fine of Rs.10,000/- each in case of default of payment of fine, they shall further suffer imprisonment for three months each.

- c. Accused Aziz Gul S/o Saeed Gul found guilty of the charged offence punishable U/s 23(1)(a) of Sindh Arms Act 2013 is convicted and sentenced to suffer imprisonment for three years and fine of Rs.5,000/-, in case of default in payment of fine, he shall further suffer imprisonment for two months.

However, all sentences were ordered to run concurrently. The benefit of Section 382-B Cr.P.C. was also extended to the appellants.

2. The Brief facts of the prosecution case are that complainant Muhammad Owais S/o Ghulam Khowaja lodged FIR at PS stating therein that he is working in Bonus Soap company as salesman. On 15.09.2020 he alongwith Shuja Ahmed and loader Imran loaded soap in Suzuki van CB-6404 for supply, went to Surjani Town area at about 02:30 pm when he supplied soap to a shop and reached main road Liyari, Sector 36, Surjani Town Karachi in the meanwhile three persons boarded on a motorcycle forcibly stopped him, two armed suspects got in the vehicle, and on gunpoint one of the them occupied driving seat and other one robbed/looted cash of Rs.45000/- Q-Mobile, containing company SIM bearing No.0320-2595303, from dash board of van and handed over to their companion who was following them on motorcycle. In the meanwhile, two patrolling policemen on private motorcycle signaled the culprit to stop the van, accused persons on seeing the police party made straight firing upon them. In reprisal police party also shot fires upon the accused persons. Both the suspects were apprehended, whereas, one suspect who was following his companions on motorcycle, made his escape good from the scene alongwith looted articles and cash, his name was disclosed by apprehended suspects as Zaheer @ Mahajir. They disclosed their names as Aziz Gul and Akhtar Ali. Police party recovered from the possession of accused Aziz Gul one unlicensed pistol of 30 bore alongwith loaded magazine with two live bullets and one stuck in chamber. After completion of formal proceedings FIRs were lodged at PS.

3. After usual investigation, the case was challaned and charge was framed against the appellants whereby they pleaded not guilty to the said offences.
4. The prosecution in order to prove its case examined 07 Prosecution Witnesses and exhibited various documents and other items. The statement of accused was recorded under Section 342 Cr.P.C in which they denied the allegations levelled against them and claimed false implication by the police. However, the appellants did not give evidence on oath nor produce any DWs in support of their defence.
5. After hearing the parties and appreciating the evidence on record, the trial court convicted the appellants and sentenced them as set out earlier in this judgment; hence, the appellants have filed this appeal against their convictions.
6. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated 05.03.2022 passed by the trial court and, therefore, the same may not be reproduced here so as to avoid duplication and unnecessary repetition.
7. At the very outset, learned counsel for the appellants under instructions stated that he did not contest the case on merits and the appellants accepted their guilt provided that they were given some reduction in sentence based on following special features/mitigating factors:-
 - i) That the appellants were first time offenders and capable of reformation.
 - ii) That the appellants had a large family to support.
 - iii) That the appellants had admitted their guilt and shown genuine remorse.
 - iv) That the appellants had served out a substantial portion of their sentence.
8. Based on the above special features/mitigating factors, the learned Addl. P.G. had no objection to a reasonable reduction in the sentence of the appellants.

9. We have gone through the entire evidence on record and find the appellants were arrested on the spot by the police after they attempted a robbery and subsequent exchanged of fire between the police and the appellants. Both were apprehended on spot and caught red handed and from appellant Aziz Gul, a pistol was recovered. The report of FSL also received positive which shows that the empties were matched with the pistol recovered at the scene. The motorbike of the appellants was also taken into possession. We find that no enmity has been raised against any of the police officials who arrested the appellants and acted as mashir as such they had no reason to falsely implicate the appellants. We find the evidence of the police officials to be reliable, trustworthy and confidence inspiring and believe the same and the injuries to the appellants have also been proven by the medical evidence as such, we uphold the conviction of the appellants except in respect of ATA, for which offences they are acquitted as there was no intent, design or purpose to create terror as simply the appellants tried to escape from the police after the attempted robbery. In this respect, reliance is placed on the case of Ghulam Hussain vs. the State (2020 PLD SC 61).

10. With regard to sentencing based on the special features/mitigating factors raised by learned counsel for the appellants and the no objection of learned Addl. P.G. to a reduction in sentence based on such factors and the fact that the appellants have served out a substantial part of their sentence, we hereby maintain the conviction of the appellants as mentioned above, however, reduce the appellants' sentence to the period already undergone in custody in respect of each offence for which they have been convicted and waive off any fine payable by them. The appellants shall be released unless they are wanted in any other custody case.

11. The instant appeals stand disposed of in the above terms